

APPEAL NO. 030752  
FILED MAY 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 4, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that the claimant timely reported his injury to the employer pursuant to Section 409.001; that the claimant had disability from August 20, 2002, through the date of the CCH; and that the claimant's average weekly wage (AWW) is \$289.70. The AWW issue has not been appealed and the hearing officer's determination on that issue has become final pursuant to Section 410.169.

The appellant (carrier) appeals the other issues, asserting that one of the claimant's witnesses was improperly allowed to testify. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was the on-site property manager for a storage facility, and that on \_\_\_\_\_, as he was cleaning a unit, he stepped backward and fell on a pallet, sustaining injuries to his back and left testicle. The claimant said that he got up, dusted himself off, and returned to work. Key to this appeal is that a customer, JC, approached the claimant shortly thereafter to request some assistance with a lock. JC testified at the CCH, over the objection of the carrier, that when he saw the claimant on \_\_\_\_\_, the claimant was grimacing, rubbing his back, walking gingerly, and said that he had fallen on a pallet. Facts of when the claimant reported the injury, and evidence of medical treatment are in dispute. The claimant's employment was terminated on August 12, 2002, for circumstances unrelated to the injury. A doctor took the claimant off work on August 20, 2002.

The benefit review conference (BRC) was held on December 16, 2002, and it is relatively undisputed that JC was not identified as a witness until January 3, 2003. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1) (Rule 142.13(c)(1)) provides that not later than 15 days after the BRC, the parties shall exchange the identity and location of any witnesses. The hearing officer ruled on the carrier's objection to calling JC commenting:

[I] find that even though [JC] was three days identified after the 15 days, that the Claimant had good cause because of the holidays, and because he's not represented by an attorney and that was the first time he could get in to see the ombudsman.

In its appeal, the carrier speculates that JC's testimony "became pivotal in 'tipping' the scale in favor of the Claimant and against the Carrier."

Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. In this case, the hearing officer found good cause for the late identification because of the holidays and the claimant's inability to obtain the assistance of an ombudsman until shortly before the 15th day. Under the circumstances we cannot say the hearing officer abused her discretion.

The carrier, for the first time on appeal, raises an objection to the fact that the claimant's identification did not list an address for JC. First we note that that objection was not preserved for appeal and, second, as noted by the hearing officer, the carrier had JC's name from January 3, 2003, until the March 4, 2003, date of the CCH without making any effort to contact JC or object that his location was unknown.

On the merits, the hearing officer's decision is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge